

**DUPLICATE**

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MAY 26 1989

extension, Williams has violated neither the spirit, letter, nor intent of the Commission's Rules.

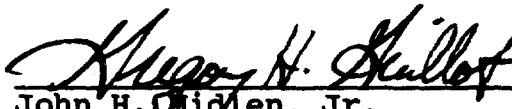
Caprock is incorrect in asserting that new evidence does not properly belong in a reply proceeding. Granted, new arguments are not proper in such a pleading. However, Williams is not advancing new arguments; the additional evidence which has surfaced regarding this matter is rebuttal evidence which subverts the sworn statements made by Caprock's principal, Kent Atkins, advanced in Caprock's Opposition to Williams' Petition to Deny. Mr. Atkins, in the Declaration attached to Caprock's pleading, stated that "Caprock . . . was not aware that its construction of the facility. . . was impermissible." See, *Declaration of T. Kent Atkins*, at 2. However, the additional evidence adduced by Williams, namely that Caprock continues to operate other unauthorized facilities, undermines Mr. Atkins' Declaration, and Caprock's claims of "innocent" error; Caprock now is aware, but it continues to commit its former sins. Since Caprock's only argument against Williams' Petition to Deny concerns Caprock's intent, rebuttal evidence regarding that intent is acceptable, and even necessary, in Williams' reply pleading.

Nor has Williams violated Section 1.46(c) of the Commission's Rules. Section 1.46(c) merely requires that the party filing an extension request covered by the rule orally notify other parties that the motion has been or is being

filed. Williams notified Caprock's counsel of the fact that the motion had been filed on Thursday morning, May 25, 1989, complying with the letter of the rule. Moreover, Caprock's Opposition to Williams' extension request was filed with the Commission only one day following the filing of the extension request. Obviously, then, counsel for Caprock was apprised of the filing through receipt of his service copy almost immediately upon Williams' submission of the filing. Williams submits that an immediate oral notification to counsel for Caprock would not have produced or enabled a quicker response. Finally, Williams notes that the alternatives suggested by counsel for Caprock--notification via answering machine messages or facsimile transmissions--do not comply with the letter requirements of Section 1.46(c).

IN VIEW OF THE ABOVE, the Request for Extension of Time filed by Williams on May 22, 1989, should be GRANTED, and the Opposition filed by Caprock should be DENIED.

RESPECTFULLY SUBMITTED:

  
John H. Midlen, Jr.  
Gregory H. Guillot

JOHN H. MIDLEN, JR., CHARTERED  
P.O. Box 5662  
Washington, D.C. 20016-5662

May 26, 1989

CERTIFICATE OF SERVICE

I, Mary Ellen Sera, do hereby certify that I have caused to be sent via First Class U.S. Mail (postage prepaid) today, May 26, 1989, a copy of the foregoing REPLY TO OPPOSITION TO REQUEST FOR EXTENSION OF TIME, to the following:

James L. Oyster  
Law Offices of James L. Oyster  
8315 Tobin Road  
Annandale, Virginia 22003

  
\_\_\_\_\_  
Mary Ellen Sera

**DUPLICATE**

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**MAY 23 1989**

**F.C.C.  
OFFICE OF THE SECRETARY**

**BEFORE THE**

**Federal Communications Commission**

**WASHINGTON, D.C. 20554**

**In re Application of**

**CAPROCK EDUCATIONAL BROADCASTING )  
FOUNDATION )**

**File No. BMPED-880328MM**

**For Modification of )  
Construction Permit )  
Lubbock, Texas )**

**To: The Chief, Mass Media Bureau**

**FURTHER REQUEST FOR EXTENSION OF TIME**

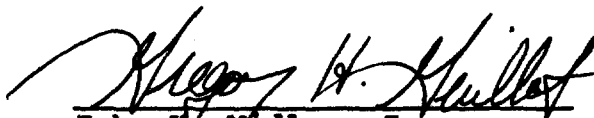
Williams Broadcast Group (Williams), licensee of Station KJAK(FM), at Slaton, Texas, by its attorneys, hereby requests a further extension of time, until Wednesday, May 31, 1989, in which to submit a reply to the Opposition to Petition to Deny (Opposition), filed by Caprock Educational Broadcasting Foundation (Caprock), permittee of FM broadcast station KAMY, on May 9, 1989.

The press of business in this and other matters has been intense, resulting in the necessity for the instant extension request. With respect to this matter, counsel's efforts during the past week have been consumed by an investigation of premature construction and unauthorized operations by Caprock in connection with another station licensed to it

-- FM Broadcast Station KLMN, at Amarillo, Texas. A copy of a complaint filed with the Commission in connection therewith is appended hereto. As we understand it, those efforts have led to the close-down of KLMN. Additionally, on Tuesday, May 30, 1989, counsel has due an Application for Review or Petition for Further Reconsideration in another proceeding, which precludes the filing of Williams' Reply to Caprock's Opposition until Wednesday, May 31, 1989.

Accordingly, Williams respectfully requests an extension of two business days within which to file its reply pleading in the above-captioned matter.

RESPECTFULLY SUBMITTED:



John H. Midlen, Jr.  
Gregory H. Guillot  
Counsel for Williams Broadcast  
Group


JOHN H. MIDLEN, JR. . . CHARTERED



CERTIFICATE OF SERVICE

I, Mary Ellen Sera, do hereby certify that I have caused to be sent via First Class U.S. Mail (postage prepaid) today, May 26, 1989, a copy of the foregoing FURTHER REQUEST FOR EXTENSION OF TIME, to the following:

James L. Oyster  
Law Offices of James L. Oyster  
8315 Tobin Road  
Annandale, Virginia 22003

  
\_\_\_\_\_  
Mary Ellen Sera

Law Offices  
**JOHN H. MIDLEN, JR.**

Chartered  
P.O. Box 5662  
Washington, D.C. 20016-5662

(202) 333-1800  
Facsimile (202) 699-0194

MAY 25 '89

OFFICE OF THE SECRETARY

May 25, 1989

Ms. Edythe Wise, Chief  
Complaints and Investigations Branch  
Mass Media Bureau, Room 8210  
Federal Communications Commission  
2025 M Street N.W.  
Washington, D.C. 20554

Re: COMPLAINT  
Station KLMN(FM), Amarillo, Texas  
Caprock Educational Broadcasting Foundation  
License File No. BLED-880620KB

Dear Ms. Wise:

Williams Broadcast Group (Williams), licensee of Station KJAK(FM), Slaton, Texas, requests that you investigate, and close down, the current operation of Station KLMN(FM), Amarillo, Texas, owned and operated by Caprock Educational Broadcasting Foundation (Caprock) on Channel 206A. Caprock's authorized transmitter location, as specified in its above-referenced license, is 0.4 kilometers southeast of 34th and Helium Road in Amarillo, Texas, at geographic coordinates North Latitude 35 10 21.0, West Longitude 101 57 13.0. Caprock has pending an application for modification of its construction permit, File No. BMPED-880321IA, seeking authorization to relocate its transmitter and antenna to a location 2.5 miles north of Amarillo on FM 1719, at geographic coordinates North Latitude 35 15 39, West Longitude 101 52 53, and to increase its power and antenna height.<sup>1</sup> However,

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<sup>1</sup>Apparently, the proposed location is the same location as that used by FM Broadcast Station KRGH, Amarillo, Texas, on 6000 North Western. See FCC License No. BLH-861125KA. KRGH is licensed to Atkins Broadcasting, owned by Kent Atkins, Caprock's dominant principal. However, Williams notes that the geographic coordinates listed for KLMN's proposed move in its above-referenced application differ from the coordinates listed in KRGH's above-referenced license, although the address and tower are the same. This variance serves as yet another example of Caprock's imprecision and flagrant disregard for the Commission's Rules.

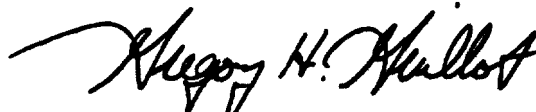


Ms. Edythe Wise  
May 25, 1989  
Page Two

Station KLMN has commenced operations from and with the facilities described in its modification application. Accordingly, the unauthorized operation is from an entirely different location than is currently authorized. Moreover, we believe current operation to be substantially over power.

It is requested that Station KLMN be contacted<sup>2</sup>, that the information contained herein be confirmed, and that the station be ordered, by telegram, to return to operation from its currently authorized facilities.

Very truly yours,



John H. Midlen, Jr.  
Gregory H. Guillot  
Counsel for  
Williams Broadcast Group

cc: Mr. Dennis Williams  
Mr. Arthur E. Doak  
James L. Oyster, Esq.

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<sup>2</sup>For the Commission's convenience Williams notes that no telephone listing or address is available for Station KLMN; all communications with the unauthorized facility apparently must be made through the listing available for KRCN; the stations are co-located.